

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7655

BILL NUMBER: HB 1698

NOTE PREPARED: Jan 12, 2003

BILL AMENDED:

SUBJECT: Home Loan Protection.

FIRST AUTHOR: Rep. Crawford

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill transfers licensing and regulation of loan brokers to the Department of Financial Institutions. It restricts certain lending acts and practices. It also establishes the Mortgage Fraud Unit under the Attorney General. The bill increases mortgage recording and loan broker registration and renewal fees. It requires the Housing Finance Authority to provide mortgage literacy training programs. The bill also allocates increased revenue to the Housing Finance Authority and the Mortgage Fraud Unit.

Effective Date: Upon passage; July 1, 2003.

Explanation of State Expenditures: (Revised) *Loan Broker Regulation* : This bill transfers the licensing and regulation of loan brokers to the Department of Financial Institutions (Department). Currently, loan brokers are regulated by the Securities Commissioner of the Secretary of State. Expenses incurred in administering the loan broker regulation are to be paid from appropriations made from the State General Fund, which will now be made to the Department. The bill also provides for the costs of investigations and civil penalties recovered through loan broker regulation are to be deposited in the dedicated Financial Institutions Fund, rather than the Securities Division Enforcement Account.

The rules adopted by the Securities Commissioner before July 1, 2003, concerning the licensure and regulation of loan brokers are considered to be rules of the Department on July 1, 2003.

Mortgage Fraud Unit - This bill establishes the Mortgage Fraud Unit (Unit), which is to be administered by the Attorney General (AG). The Unit will be required to cooperate with, and the AG will be allowed to file complaints with, the Professional Licensing Agency, Department of Financial Institutions, Department of Insurance, Securities Division of the Secretary of State, and the Supreme Court Disciplinary Commission

in order to implement the Unit's responsibilities. The Unit will also be required to cooperate with these agencies in order to implement and maintain an education program which, is intended to inform mortgage loan consumers of lending fraud.

The Unit may require two additional Deputy Counsels (PAT 1) and one additional law clerk (PAT VI). The estimated direct and indirect cost of these three positions would be \$136,300 in FY 2004 and \$136,150 in FY 2005. Although this bill does not contain an appropriation, it provides for the Unit to be funded with various fee revenues (see Explanation of State Revenues). The funds and resources required could also be supplied through a variety of other sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. The Office of the Attorney General has 278 authorized full-time positions. As of January 6, 2003, there were 58 full-time positions vacant. The Office of the Attorney General reverted just under \$4,000 from its operating account at the end of FY 2002. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Explanation of State Revenues: *Mortgage Fraud Unit* - The bill raises a county recorder's fee for recording a mortgage by \$3, of which the recorder will retain \$0.50. The Indiana Housing Finance Authority will receive \$2 of the additional fee which will be used to identify, promote, and fund mortgage literacy training and programs throughout the state. The remaining \$0.50 will be paid to the Mortgage Fraud Unit.

According to the Department of Local Government Finance, approximately 200,000 parcels of land are sold or conveyed each year. Assuming that a majority of these filings, or 90%, have a mortgage associated with the parcels, the county recorder fee increase would generate \$90,000 for the recorder, \$360,000 for the Housing Authority, and \$90,000 for the Unit. If only half of the filings, or 100,000, have a mortgage associated with the parcels, the fee increase would generate \$50,000 for the recorder, \$200,000 for the Housing Authority, and \$50,000 for the Unit.

The Unit will also receive \$2 from a \$10 fee increase to loan broker initial and renewal registrations. Both fees are currently \$200 each, and are valid for two years. The Indiana Housing Finance Authority will receive the remaining \$8, which is to be used for the same purpose as stated above. For FY 2002, the Loan Broker Regulation Account received \$55,000 in revenue from loan broker licensing fees. Based on this amount, 275 loan brokers either applied for a license or renewed a license. If 275 loan brokers continue to pay renewal fees, the \$10 increase will generate \$550 for the Unit and \$2,200 for the Housing Finance Authority.

Civil Penalty: Persons committing deceptive acts under this bill may be assessed not more than \$500 per act according to current law. If an injunction has been filed and has been violated, the person violating the injunction would be required to pay a civil penalty not exceeding \$15,000.

Criminal Penalty: A person knowingly or intentionally violating the bill commits a Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: *Criminal Penalty:* A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Mortgage Fraud Unit -* County recorders' revenues will increase by \$0.50 per mortgage filing (see Explanation of State Revenues).

Criminal Penalty: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Office of the Attorney General; Professional Licensing Agency and appropriate licensing boards; Department of Financial Institutions; Department of Insurance; Office of the Secretary of State, Securities Division; Indiana Supreme Court.

Local Agencies Affected: County recorders, trial courts, local law enforcement agencies.

Information Sources: Department of Financial Institutions website: www.in.gov/dfi/members/minutes; State Budget Agency website: www.in.gov/sba; State Staffing Table, January 6, 2003.

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